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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 DOMONIC RONALDO MALONE,

Case No. 2:18-cv-01310-GMN-GWF

10 Petitioner,

ORDER

11 v.

12 BRIAN WILLIAMS, et al.,

13 Respondents.

14 Petitioner Domonic Ronaldo Malone has submitted a *pro se* habeas corpus  
15 petition and has now paid the filing fee (ECF Nos. 1, 6). The petition shall be dismissed  
16 without prejudice because Malone has a petition pending in the Nevada state courts.

17 A federal court will not grant a state prisoner's petition for habeas relief until the  
18 prisoner has exhausted his available state remedies for all claims raised. *Rose v.*  
19 *Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b). A petitioner must give the state  
20 courts a fair opportunity to act on each of his claims before he presents those claims in  
21 a federal habeas petition. *O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999); *see also*  
22 *Duncan v. Henry*, 513 U.S. 364, 365 (1995). A claim remains unexhausted until the  
23 petitioner has given the highest available state court the opportunity to consider the  
24 claim through direct appeal or state collateral review proceedings. *See Casey v. Moore*,  
25 386 F.3d 896, 916 (9th Cir. 2004); *Garrison v. McCarthy*, 653 F.2d 374, 376 (9th Cir.  
26 1981).

27 Here, petitioner has attached some documents from his state proceedings. He  
28 included an October 9, 2018 Nevada Court of Appeals order. Case No. 76244. The

1 appeals court denied his petition for a writ of mandamus, which asked the appeals court  
2 to order the state district court to adjudicate Malone's pending petition. The court of  
3 appeals stated that it expected the district court to "resolve all pending matters as  
4 expeditiously as its calendar permits." *Id.* Thus, Malone has a petition currently before  
5 the state district court. The resolution of Malone's state proceedings could render a  
6 federal habeas petition moot. Accordingly, this federal petition shall be dismissed  
7 without prejudice to petitioner filing a new federal habeas petition, in a new case with a  
8 new case number and a new, completed application to proceed *in forma pauperis* with  
9 the required financial information or the \$5.00 filing fee.

10 **IT IS THEREFORE ORDERED** that the Clerk **shall detach and file** the petition  
11 (ECF No. 1-1).

12 **IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice as  
13 set forth in this order.

14 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

15 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel  
16 (ECF No. 2) is **DENIED** as moot.

17 **IT IS FURTHER ORDERED** that the Clerk shall enter judgment accordingly and  
18 close this case.

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20 DATED: <sup>26</sup> November 2018.

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23 GLORIA M. NAVARRO, CHIEF JUDGE  
24 UNITED STATES DISTRICT COURT  
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